

GUIDE TO COMPLETING G.L. c. 209A FORMS - Updated for 1.17.12 form revisions

OVERVIEW OF FORMS

There are eleven 209A forms:

- Complaint Form (2 pages, includes Affidavit) (FA-1, FA-1A)
- Defendant Information Form (FA/HA-5)
- Plaintiff Confidential Information Form (FA/HA-6)
- Request for Access to Plaintiff Confidential Information (FA/HA-7)
- Order Form (2 pages) (FA-2, FA-2A)
- Motion for Impoundment (FA/HA-8)
- Affidavit for Filing Out-of-State Protective Order (FA/HA-9)
- Plaintiff and Defendant's Affidavits When Child Support is Requested (FA-11, FA-12)
- Plaintiff's/Defendant's Motion to Modify or Terminate Abuse Prevention Order (FA-13, FA-14)
- Translation of Affidavit (FA/HA-15)

A. COMPLAINT FORM (FA-1, FA-1A)

The Complaint Form is filled out by the plaintiff and consists of two pages.

PAGE ONE

Page One should contain all the information the judge will need to decide whether or not to issue a restraining order.

Please note: the contact information for the parties is no longer on Page One of the complaint but can be found on the Defendant Information Form and the Plaintiff Confidential Information Form.

Please note: The Complaint has been revised to provide:

- Separate check boxes to request that the defendant stay away from the plaintiff's residence, workplace and/or school. See Section J, lines 3a, 3b, 3c
- Separate check boxes to allow a plaintiff to make requests that certain addresses not appear on the order pursuant to the confidentiality of records requirements of G.L. c. 209A, § 8. See Section J, lines 4a, 4b, 4c.

The back of the white original of Page One is the **Affidavit**. It is important that the plaintiff provide specific details about the alleged abuse and sign the Affidavit. The plaintiff is specifically directed to describe in detail the most recent incidents of abuse and any history of abuse. When it is necessary to have the Affidavit translated into English, the **Translation of Affidavit** form (FA/HA-15) can be downloaded from the Trial Court website for use by the translator.

<http://www.mass.gov/courts/docs/forms/trial/209a/faha-15.pdf>

Please note: a signature line has been added for a person who has transcribed the affidavit.

On the back of the other copies of Page One are "Instructions to the Plaintiff" about how to fill out the Complaint.

PAGE TWO

The second, separate page of the Complaint form is used only when the plaintiff has children under the age of 18. Parts A and B of Page Two must be completed whenever the plaintiff has children under the age of 18, even if the plaintiff is not requesting any orders related to the children. Plaintiffs who are requesting orders related to the children will also need to complete other parts of Page Two. This is discussed in more detail below.

Please note: Page Two of the Complaint has been revised to provide:

- The addition of care and protection and guardianship proceedings to the list of related proceedings. See Section A.
- Removal of DOB of children and replacement with age. See Sections C and D.
- Addition of request for defendant to remain away from child(ren)'s school and daycare. See Section D.
- Addition of a line for "Other" under visitation requests. See Section E.

B. DEFENDANT INFORMATION FORM (FA/HA-5)

The Defendant Information Form is also filled out by the plaintiff. This form provides information that the police will need to find and serve the defendant with a copy of the restraining order. This is important for the plaintiff's safety, since enforcement of the Order may depend on good service. Also, more effective service will mean fewer returns to court by the plaintiff while the police are trying to locate the defendant.

This form is also important because it can warn the police about firearms, past history of violence, or other safety risks to the officer who will serve the Order. If the judge issues a restraining order, this form must be given to the police along with their copies of the Order. This can be a critical safety issue for both the plaintiff and the police.

This form should be transmitted to the police along with the complaint. Court staff should make a photocopy of the Defendant Information Form to keep in the case file.

C. PLAINTIFF CONFIDENTIAL INFORMATION FORM (FA/HA-6) REQUEST FOR ACCESS TO PLAINTIFF CONFIDENTIAL INFORMATION (FA/HA-7)

The plaintiff's residential and workplace addresses and telephone numbers and the name of the plaintiff's workplace are deemed confidential by statute (G.L. c. 209A, §§ 3(g) and 8.) That information must be recorded on the separate Plaintiff Confidential Information Form, and is kept confidential except as authorized by the plaintiff, or to prosecutors, victim-witness advocates, domestic violence victims' counselors, sexual assault counselors and law enforcement officers, if necessary in the performance of their duties. In addition, the information will appear on the court order and will be accessible to the defendant and the defendant's attorney unless the plaintiff requests that the information be withheld from the order. Any other information that the plaintiff wants kept confidential must be impounded by the court.

A request for access to confidential information must be made on the appropriate form, the Request for Access to Plaintiff Confidential Information (FA/HA-7). Unless the person making the request falls into one of the categories listed above, access can be provided only upon order of the court. Impounded information can only be released by order of the court.

D. ORDER FORM (FA-2, FA-2A)

The Order form contains a record for all parties of what the judge orders and consists of two pages.

PAGE ONE

Please note: Page One of the Order has been revised to provide:

- More limited defendant Personal Identifying Data
- Separate check boxes to order the defendant stay away from the Plaintiff's residence, workplace and/or school. See Section A, lines 3a, 3b, 3c
- Separate check boxes to provide that certain addresses not appear on the order pursuant to the confidentiality of records requirements of G.L. 209A, § 8. See Section A, lines 5a, 5b, 5c.
- Expanded section for orders for child support. See Section A, line 9
- New line to provide notice to Defendant that child support will be considered at the next hearing and ordering the Defendant to bring certain financial information. See Section A, line 13.

PAGE TWO

Please note: Page Two of the Order has been revised to provide:

- Space for a judge to describe any typed of alternative service that may have been allowed. See Section B, line 1.
- Space under the signature line for the name of the judge to be printed or typed.
- Expanded space for a judge to list modifications in greater detail, by reducing the number of Modification and Extension sections from three to two. See Sections C, D.
- Change in language from vacated to terminated, in conjunction with the 2011 revision to *Guidelines for Judicial Practice: Abuse Prevention Proceedings*, Guideline 1:00.

On the back of the green "service" copy of Page Two of the Order is the return of service. This green copy should be sent to the police along with the yellow defendant's copy, the blue police copy and the Defendant Information Form. The green copy will be returned to the court when the police have successfully served the defendant with a copy of the Order. If the defendant has been served in court, you do not need to send this copy to the police, but service must be recorded on the Order form.

E. ADDITIONAL FORMS

- **Motion for Impoundment** (FA/HA-8). This form is to be used if the plaintiff wishes to have the confidential information impounded and thus not available to those persons who normally have access to that information (e.g., police, domestic violence counselors) and/or either party wishes to have any other information in the case impounded and not available to the public.
- **Affidavit for Filing Out-of-State Protective Order** (FA/HA-9) . For use when a person brings a certified copy of an out-of-state order for filing with a Massachusetts court.
- **Plaintiff's Affidavit in Support of Request for Child Support** (FA-11).
- **Defendant's Affidavit's in Connection with a Request for Child Support** (FA-12).
- **Plaintiff's Motion to Modify or Terminate Abuse Prevention Order** (FA-13). Does not need to be marked for a hearing, should be brought directly into the court room for hearing.

- **Defendant’s Motion to Modify or Terminate Abuse Prevention Order (FA-14). This motion needs to be marked for hearing and notice given to Plaintiff.** The form contains the steps to be taken based on how different courts handle such motions (e.g., court sets hearing and sends notice to plaintiff or defendant must request date and send notice to Plaintiff.)

FILLING IN THE COMPLAINT FORM (FA-1, FA-1A)

Much of the information requested on the Complaint Form is self-explanatory. Every space should be completed with either the information requested or by writing “not applicable” or “none” so that judges have all the information they need without having to ask unnecessary questions of the plaintiff.

PAGE ONE

Section A

Check off the appropriate box to indicate the court department, and fill in the name of the court where it says “Division.”

Section B

The name of the plaintiff, who is the person seeking protection, should be filled in here, even if the person is a minor.

Section C

Section C asks whether the plaintiff is a minor and, if so, who is filing the complaint for the plaintiff. It also asks whether the defendant is a minor. If either party is a minor, the case file *must be impounded*. This means the public is not allowed to see the case file. If a minor plaintiff comes in without an accompanying adult, he or she *must not* be turned away, and the judge should be alerted to the situation.

Section D

Section D asks the plaintiff to list any guns, ammunition, firearms identification cards or licenses to carry that belong to the defendant. This is critically important for the plaintiff’s safety as well as that of any police officer serving the Order. The law requires that the court order surrender of firearms in most 209A cases, so be sure to check that Section D is properly filled out.

Section E

Section E is important because the court must know whether there are other court actions relating to these parties. If either party has ever been to court before for a divorce, an annulment, an order for separate support, a legal separation, or a restraining order, the plaintiff should check “Yes” and provide as much information as possible concerning the court, type of case, date and docket number. This is one way for the court to learn of the existence of a cross-complaint or the possibility of a conflicting or pre-existing order. If there are no prior or pending court actions, the plaintiff should check “No.”

Section F

The name of the defendant, who is the person against whom an order of protection is sought, should be filled in here, even if the person is a minor. Section F should only contain the defendant's name. The information about the defendant which is necessary to run the probation record check and to serve the defendant should an Order be issued is found on the Defendant Information Form. It is important to check the information on the Defendant Information Form for completeness and accuracy.

Section G

In Section G, the plaintiff should identify the plaintiff's relationship with the defendant. At least one of the boxes in Section G must be checked in order for there to be a legal basis for issuing a restraining order. If appropriate, more than one box may be checked.

Section H

Section H asks whether the plaintiff has any children under the age of 18. If the answer in Section H is "Yes", the plaintiff must complete the appropriate parts of the Page Two of the Complaint which is called "Issues Pertaining to Children." Remember, only Parts A and B need to be completed when the plaintiff is not requesting orders pertaining to children. And, if the answer in Section H is "No" there is no need to give the plaintiff Page Two.

Section I

Section I essentially reiterates the legal definition of "abuse" as defined by c. 209A. The Plaintiff must check one or more boxes in Section I in order to provide a legal basis to issue the restraining order. If appropriate, more than one box may be checked.

Section J

Section J is where the plaintiff identifies the relief sought. The plaintiff should be as specific as possible about the orders requested from the court in Section J. Some plaintiffs may not realize that they may ask for more than one type of relief, including, for example, a no-contact order as well as a stay-away order. Also:

- Note that Section J, line 3 includes a box to indicate if the plaintiff's home is a multiple family dwelling. If it is a multiple family dwelling, the apartment number should be provided on the Plaintiff Confidential Information Form..
- Section J, lines 4a, 4b, and/or 4,c should be checked when the plaintiff requests that an address not appear on the order.
- Section J, line 6, which is a request for temporary support for the plaintiff, cannot be ordered by a Boston Municipal, District or Superior Court if there is a prior or pending support order from a Probate and Family Court. This may be verified by checking the Affidavit Disclosing Care or Custody.
- Section J, line 8 permits the plaintiff to request orders that are not listed on the form, such as turning over the car keys.
- Section J, line 9 should be checked if the plaintiff is requesting an *ex parte* order, which is a temporary order issued without prior notice to the defendant.

Bottom of Page One

The bottom of Page One of the Complaint form points out that to the plaintiff that the Complaint is a request for a civil restraining order to protect the plaintiff from future abuse and that prior actions of the defendant may be subject to criminal penalties. It informs the plaintiff that he or she can talk with the District Attorney where the alleged abuse occurred for more information about filing a criminal complaint. The plaintiff should also be informed that if the defendant violates the Order, this is a criminal offense and the defendant may be arrested, imprisoned and/or fined.

The Affidavit

The Affidavit is located on the back of the court's copy (white original) of the Page One of the Complaint form. The plaintiff should write down everything about the abuse he or she wants the judge to know, especially the most recent incident, the most serious incident and any history of abuse.

If the Affidavit has been transcribed by any person, that person should sign at the bottom and indicate their position.

If the Affidavit is in a language other than English, it must be translated for the Court. The **Translation of Affidavit** form can be downloaded from the Trial Court website for use by the translator.

PAGE TWO

Page Two, entitled "Issues Pertaining to Children" is only needed when the plaintiff has children and should be given to all plaintiffs with children. The plaintiff must complete parts A and B even if not requesting any orders regarding the children and even if the defendant is not the parent of the plaintiff's children. The plaintiff must verify in court whether there are or have been proceedings involving the children and must be given the opportunity to request an order of no contact with the children.

Section A

If the plaintiff indicates in Section A that there are any pending or completed care or custody proceedings in any court involving children of the parties, a separate Affidavit Disclosing Care or Custody must also be filed in accordance with Trial Court Rule IV. Care and protection and guardianship proceedings should be included here.

Section B

This section concerns prior or pending actions for paternity. It is important in cases where the parties are not married and where there may be issues of custody, visitation and support.

Section C

Section C must be completed if the plaintiff is requesting custody of the parties' minor children. The age of each child should be listed (not the Date of Birth). The plaintiff does not need to request custody of the plaintiff's children who are not also the defendant's children. If there is a prior or pending custody order from the Probate and Family Court or the Juvenile Court, the plaintiff may not obtain a custody order from a Boston Municipal, District or Superior Court.

Further, those three departments may NOT grant custody or visitation to the defendant in a 209A case. Only the Probate and Family Court Department may do that. Whether there is a prior or pending custody order may be verified by checking the Affidavit Disclosing Care or Custody.

Section D

Section D permits the plaintiff to ask the court to order that the defendant not have any contact with the children. Any minor children living with the plaintiff may be listed here, even if they are not the defendant's children. The age of each child should be listed (not the Date of Birth). The plaintiff may also request that the defendant remain away from the child(ren)'s school and daycare.

The plaintiff must provide specific reasons to support this request for no contact with the children. This section is designed to minimize potential conflict between Boston Municipal, District or Superior Court no-contact orders and Probate and Family Court visitation orders. This section should not be completed if the plaintiff wishes to allow the defendant to see the children. (Remember, though, that a District Court, Boston Municipal Court or Superior Court judge may not order visitation as part of a c. 209A Order.) As stated on the form, if the plaintiff alleges that the defendant has also abused the children, a separate 209A Complaint may be filed on behalf of each child.

Section E

Section E should only be completed if the plaintiff is filing the 209A Complaint in Probate and Family Court, since only the Probate and Family Court can make orders concerning visitation. In Probate and Family Court, the plaintiff may ask the court to permit visitation between the defendant and the minor children; to prohibit any visitation; or to permit visitation with certain limitations. For example, the plaintiff may request, and the court may order, that visits occur only at a visitation center, or only under the supervision of a particular person, or that transportation for visits be provided by a named third party. The plaintiff may also request that the defendant pay any costs involved in implementing the visitation order. There is also a line for "Other" if there are any other requests in connection with visitation.

Section F

This section should be checked if the plaintiff is requesting temporary support for the children in her or his custody. It should not be filled out in the Boston Municipal Court, District Court or Superior Court if there is a pending or prior support order from a Probate and Family Court or a Juvenile Court. Again, this may be verified by checking the Affidavit Disclosing Care or Custody.

Assembling the Copies of the Complaint Form

When the plaintiff has completed the Complaint form, the four copies of the Complaint form should be separated by color and, if Page Two has been completed, the two pages of the same color stapled together. The white original is for the court, the pink copy is for the plaintiff, the yellow copy is for the defendant, and the white copy is for Probation.

FILLING IN THE ORDER FORM (FA-2, FA-2A)

The Order form is the official record of the judge's orders in the case. It explains to the plaintiff, the defendant and the police exactly what the defendant cannot do and/or must do. It is important that all necessary boxes and lines have been completed and that the judge's signature appears after Section B on Page Two.

PAGE ONE

Top Section of the Order Form

The information about the plaintiff and the defendant should be completely filled out.

Section A

Section A contains the specific orders made by the judge. The top left box should be checked if the Order was issued *ex parte*, or without advance notice to the defendant. The top right box should be checked if the order was issued by the judge on call for the Judicial Response System.

If the judge has checked one or more of the boxes in Section A, lines 1-17, all appropriate spaces following that box should be completed. For example, if the judge orders no contact in **Section A, line 2**, the judge should fill in the number of yards the defendant is ordered to stay away. Likewise, if the judge orders the defendant to stay away from the plaintiff's residence (**Section A, line 3**), plaintiff's workplace (**Section A, line 4a**) or the children's school (**Section A, line 7**), the judge should supply those addresses in the spaces provided. (Unless the plaintiff has requested that the residential and workplace addresses be kept confidential, in which case **Section A, lines 3 and 4a** should not be checked.)

Section A, lines 6 and 7 correspond to the requests on Page Two of the Complaint. **Section A, line 6** may contain the names of all minor children of the parties. **Section A, line 7** may contain the names of any of the plaintiff's minor children, including those who are not the defendant's children.

Section A, line 8, which concerns visitation, can only be completed in the Probate and Family Court. Any time a sub-box is checked, the judge should fill in all appropriate blank spaces following that box.

If the Plaintiff requests spousal or child support, **Section A, line 9** and the appropriate sub-boxes should be checked. See *Guidelines for Judicial Practice: Abuse Prevention Proceedings*, Guideline 6:05B for guidance on calculating child support.

Section A, line 12 must be checked any time there is an emergency or temporary order or after a hearing, if the judge orders the surrender of firearms. The name of the police department that will serve the Order, that is, the police department in the city or town where the defendant lives, should be filled in.

Section A, line 13 should be checked when the court is issuing an *ex parte* order and the plaintiff has requested an order of child support, evidence on which will be heard at the hearing after notice.

PAGE TWO

Section A, line 16 should list any outstanding warrants for the defendant. This information can be obtained from the Board of Probation check and the Warrant Management System check.

Section A, line 17 will be checked when the judge finds that there is an imminent threat of bodily injury to the plaintiff. The appropriate police department(s) should be listed and notified.

Section B

Section B concerns notice given to law enforcement.

In most cases, the plaintiff will have already completed the Defendant Information Form. Therefore, **Section B, line 2** should be checked off and the original Defendant Information Form should be attached to the police copy of the Order.

If the defendant appears in court for a 209A hearing, or for any other reason, such as a criminal arraignment, the defendant should be given a copy of the Order before leaving court. Whenever the defendant is given a copy of the Order, **Section B, line 3** should be signed and dated by the person handing him or her the Order. No further service is required and the green copy requesting return of service information does not need to be sent to the police.

Time and Date of Next Hearing

This section provides notice to the defendant of the time and date of the next hearing. No further notice is required if appropriate service of the order is made.

Judge's Signature

It is critical that the judge sign and date the Order at the bottom of Section B. The judge's name must also be printed or typed on the line below the signature.

Section C and Section D

If the judge extends the prior Order, for example at the "hearing after notice" (the "ten-day" hearing) or at the end of a one-year Order, the judge should check Section C or Section D. Any modifications to the existing Order should be noted. The judge should also be careful to check the box indicating whether the firearms ordered surrendered in Section A, line 12 continue to pose a threat to the plaintiff. If that box is NOT checked, any firearms or other items ordered surrendered will be returned to the defendant.

Note that it is not required that the defendant appear at the hearing; proper notice of the hearing date was provided to the defendant as part of the original order and the order may be extended even if the defendant does not appear. However, the defendant must be properly served with a copy of the extended order.

It is important that the judge sign and date the Order at the bottom of these boxes. The judge's name must also be printed or typed on the line below the signature.

Section E

If at some point the judge terminates the Order, Section F should be completed. Again the judge should sign and date the Order at the bottom of these boxes. The judge should also indicate whether the order was terminated at the request of the plaintiff.

Service of Extended or Modified Orders

A critical point to remember is that any time the Order is extended or modified, the defendant must be served with the new Order. The next hearing date should always be included. In order to serve the defendant (or the plaintiff, if the Order is modified or vacated at the request of the defendant) it is important to check that the addresses of both parties are still current.

Attestation of Clerk-Magistrate or Register

It is important that the (Assistant) Clerk-Magistrate or (Assistant) Register sign the bottom of the order.

Disposition of the Copies of the Order Form

Once the Order is complete, the six copies of the Order must be separated by color and the two pages of each color should be stapled together.

- The white original is for the court.
- The pink copy is for the plaintiff.
- The yellow copy is for the defendant.
- The blue copy is for the police.
- The green copy is also sent to the police for return of service.
- The white copy is for Probation.

The original Defendant Information Form is sent to the police along with their copies of the Order.